

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 UNITED STATES OF AMERICA,) Case 1:21-cr-245
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10) Alexandria, Virginia
11) October 11, 2022
12) 9:07 a.m.
13)
14) Volume 1 (AM Session)
15) Pages 1 - 85

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TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE ANTHONY J. TRENGA

UNITED STATES DISTRICT COURT JUDGE

AND A JURY

APPEARANCES:

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THE DEFENDANT, IGOR Y. DANCHENKO, IN PERSON

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 (The jury is not present.)

2 THE CLERK: The court calls Criminal Case
3 2019-cr-245, *United States v. Igor Danchenko*. This
4 case comes on for trial by jury.

5 Counsel, will you please note your
6 appearances for the record.

7 MR. DURHAM: Good morning, Your Honor. John
8 Durham for the United States. At counsel table with me
9 are Assistant Special Counsel Michael Keilty and
10 Brittain Shaw, and at the rear table is Paralegal
11 Specialist Kori Arsenault.

12 We'd ask the Court's permission for the case
13 agent in this matter, Ryan James, with the FBI to be
14 present.

15 THE COURT: All right. Yes.

16 All right. Welcome.

17 MR. DURHAM: Thank you, Your Honor.

18 MR. SEARS: Good morning, Your Honor. Stuart
19 Sears and Danny Onorato on behalf of Mr. Danchenko, who
20 is present in the courtroom with us, and we have three
21 paralegals from our law firm, Charlie Tent, Grace
22 McMahon, and Matt Milzman.

23 We have no objection to the case agent
24 remaining in the courtroom.

25 THE COURT: All right. Welcome, Everyone.

1 We're here for trial.

2 I have a number of items I'd like to raise.

3 Before I do that, let me ask counsel: Are there any
4 issues you want to raise, Mr. Durham?

5 MR. DURHAM: Yes. Thank you, Your Honor.

6 First, as the Court will recall, we were
7 given permission to file the government's witness list
8 under seal in this matter.

9 THE COURT: Yes.

10 MR. DURHAM: We'd ask at this point that be
11 unsealed.

12 THE COURT: All right. That will be
13 unsealed.

14 MR. DURHAM: There are several matters that
15 we've had discussions with counsel about that may be
16 some of the same matters that Your Honor has, perhaps
17 not.

18 One is there's a motion *in limine* that was
19 filed. Actually, there are several motions *in limine*
20 filed by counsel. There's one remaining motion that
21 needs to be resolved, and that relates generally to the
22 failure of Mr. Danchenko to provide certain documents.

23 A second issue that we'll discuss with
24 counsel relates to the scope and testimony to be
25 permissible regarding the previous investigation of

1 Mr. Danchenko in connection with the counterespionage
2 case.

3 A third issue that we mentioned briefly to
4 counsel this morning -- we had received some
5 translations of documents from counsel as late as last
6 night or early this morning that we want to be heard
7 on. Because similar to Your Honor's ruling on evidence
8 that the government had sought to present, as well as
9 hearsay, there are emails related to Mr. Zlodorev.
10 There are some emails that we understand the defense
11 would like to offer between Mr. Millian and
12 Mr. Zlodorev that, we think, are surely hearsay and are
13 not properly raised to the Court.

14 The last issue has to do with a particular
15 dossier report. It's generally referred to and most
16 easily referred to as 2016/95. In that connection,
17 that particular report relates to Source E, who is
18 identified as Sergei Millian, and the parties have open
19 issues relating to how much of that report should
20 probably be admitted. So there's some consensus, but
21 there are still differences.

22 THE COURT: All right. What's the
23 government's exhibit number on that?

24 MR. DURHAM: The government's exhibit number
25 is 109, Your Honor.

1 THE COURT: All right.

2 MR. DURHAM: I think I've covered it.

3 Obviously, counsel will correct me if there are
4 additional issues.

5 Thank you.

6 THE COURT: All right. Mr. Sears, anything
7 you want to raise?

8 MR. SEARS: Your Honor, those are the issues
9 we had discussed with the special counsel that we were
10 hoping to address today before the trial starts. If
11 the Court wishes to hear argument on that, I can do
12 that.

13 I did want to raise another issue, which is
14 that we have a series of articles that were publicly
15 available back in July of 2016, May through July 2016.
16 We've marked them as exhibits. We've provided them
17 previously to government counsel. As Your Honor may
18 recall --

19 THE COURT: What was the time period?

20 MR. SEARS: May through July of 2016 -- or
21 through August, excuse me, May through August 2016. I
22 can hand up a copy with the assistance of the court
23 security officer.

24 THE COURT: All right.

25 (Documents are passed up to the Court.)

1 MR. SEARS: As Your Honor may recall, the
2 allegations regarding Mr. Dolan stem around an email
3 that Mr. Dolan sent to Mr. Danchenko that contains some
4 information about information he purported to learn
5 from a friend about why Paul Manafort resigned from the
6 campaign that summer.

7 Through our own research and what, I think,
8 Mr. Dolan would say as well is that was all public
9 information when he provided it to Mr. Danchenko. We
10 found a series of articles leading up to August 20,
11 which is when that email was sent, that go into every
12 detail that was in the email that Mr. Dolan sent.

13 So from a defense perspective, we want to
14 show that all of this information was, in fact,
15 publicly available. We would like to admit those
16 articles. There's actually not a lot of case law on
17 the admission of articles. I do think the Court can
18 take judicial notice.

19 I don't think there's going to be a fight
20 over whether or not those articles were actually
21 published or not or available during that time frame.
22 We would not be offering them for the truth of the
23 matter asserted, just to show that that information was
24 publicly available leading up to that email whether it
25 was true or not.

1 If the Court determines that those articles
2 are relevant, we would seek to admit them through
3 stipulation, hopefully, or through the Court taking
4 judicial notice. If we had to, we can call the
5 paralegal who went online and pulled the articles. But
6 I think the bigger argument, my guess, is more about
7 relevance.

8 THE COURT: All right. Anything else on
9 that?

10 MR. SEARS: So, Your Honor, there were two
11 exhibits that had been in the government's list of
12 exhibits for some time now. And in the last week or
13 so -- this happens as you're gearing up for trial and
14 you start thinking more about what exhibits you're
15 going to use or not. Two exhibits that we intended to
16 rely on that were government exhibits no longer appear
17 on the government's exhibit list.

18 I don't have the numbers because --

19 (Counsel confer.)

20 MR. SEARS: There might be three, I'm told.
21 I'm not sure what the third one is, but I'm sure
22 Mr. Onorato can tell the Court.

23 One is Amtrak records. These are records
24 that the government obtained through a subpoena that
25 show that Mr. Danchenko was, in fact, in New York from

1 July 25th to the 28th -- or from the 26th to the 28th,
2 which is the time when he was under the impression that
3 he was going to meet with whoever was the anonymous
4 caller.

5 We had a stipulation worked out that those
6 records would come in. The government doesn't appear
7 to be offering them. We would like to offer it. I'm
8 not sure exactly who we would offer it through at this
9 point. I haven't had a chance to talk to government
10 counsel about that. I don't know what their position
11 would be, but I wanted to raise that.

12 THE COURT: All right.

13 MR. SEARS: There's also a July 28, 2016,
14 Facebook message that Mr. Danchenko sent to his then
15 wife at the time where he's in New York. He sends a
16 photograph of some giraffes at the Bronx Zoo and says,
17 "Another meeting tonight." And that was, from our
18 perspective, the night that he was supposed to meet
19 with Sergei Millian or the person he believed was
20 Sergei Millian.

21 The government is no longer seeking to admit
22 that. We would seek to admit it through a case agent
23 or through stipulation. We don't believe it's hearsay.
24 We believe it's the present state of mind exception
25 that shows plans. This whole case is about what was in

1 his head at the time frame. I can't think of any more
2 relevance than that document. So we'd be seeking to
3 admit that as well. I wanted to raise it now so we're
4 not dealing with it mid-trial, and there are some
5 logistics about who that would be coming through. So I
6 just wanted to flag that as well.

7 THE COURT: All right.

8 MR. ONORATO: Your Honor, along those lines,
9 the government was seeking to introduce an email -- and
10 they still are -- on July 26 between Mr. Millian and
11 Mr. Zlodorev. They had one more email in that chain
12 originally in their exhibits, and they've excised the
13 last email from that chain. So as a rule of
14 completeness matter, we would like to show the jury
15 what Mr. Zlodorev told Mr. Millian about Mr. Zlodorev's
16 relationship with Mr. Danchenko at the time. Because,
17 again, it goes to state of mind of Mr. Millian, not
18 offered for the truth but to explain the circumstances
19 about what happened here.

20 THE COURT: All right. I take it, Mr. Sears,
21 you've not had an opportunity to really talk to
22 Mr. Durham about these issues.

23 MR. SEARS: Some of the issues we've
24 discussed today.

25 (Reporter clarification.)

1 MR. SEARS: Others we have not.

2 MR. DURHAM: Your Honor, I'm very confident
3 that we can work these out. We can offer those same
4 exhibits --

5 THE COURT: All right.

6 MR. DURHAM: -- to obviate the problem.

7 THE COURT: All right. Great.

8 All right. Let me just raise a couple of
9 items. With respect to the jury, the jurors that are
10 coming in, does any party want me to consider any
11 further strikes for cause based on the questionnaires?

12 MR. SEARS: We do, Your Honor.

13 THE COURT: All right.

14 MR. SEARS: Your Honor, Juror No. 59 is
15 Joseph Messina.

16 THE COURT: Juror No. 59?

17 MR. SEARS: Juror No. 59 as they were
18 numbered.

19 THE COURT: All right.

20 MR. SEARS: Mr. Messina on his
21 questionnaire -- on page 17, the question that was
22 asked, "Other than as a voter, are you now or have you
23 previously been actively involved in politics, for
24 example, fundraising, voter registration, candidate for
25 office, or candidate staff?" He responded, "Yes," and

1 for the explanation provided, "I volunteered on
2 campaigns for Rick Santorum and George Allen in the
3 distant past."

4 We have done some research on Mr. Messina,
5 all open source, and we think that is just not a candid
6 statement. He's been very involved in politics. He
7 was a campaign manager for a Virginia republican just
8 recently. I can hand up to the Court -- I also
9 provided this just now to government counsel --
10 everything we found on social media.

11 THE COURT: All right.

12 (Documents are passed up to the Court.)

13 MR. SEARS: From our perspective, because he
14 was not candid about that, it gives us concerns about
15 whether or not he maybe misrepresented that information
16 in order to not be struck for cause.

17 THE COURT: All right. Any others?

18 MR. SEARS: Yes, Your Honor. There's two.
19 No. 61, the last name is Mooney. I flagged this one,
20 Your Honor. I don't know that it's necessarily for
21 cause at this moment. But Mr. Mooney referenced that
22 he wears hearing aids, and that was just something that
23 comes up from time to time. We want to be mindful of
24 that.

25 THE COURT: All right.

1 MR. SEARS: The last one, Your Honor, is
2 No. 67, which is Mr. Osei, O-S-E-I. He did note in his
3 questionnaire that he has difficulty with English, and
4 that's always a concern. I think in this case in
5 particular, given some of the facts of the case, that
6 would be a concern for us as well.

7 THE COURT: All right. Mr. Durham, does the
8 government have any jurors it would like to talk about?

9 MR. DURHAM: Thank you, Your Honor, yes.

10 We'd ask the Court to consider striking Juror
11 No. 26, Ms. Edmond, who indicates in response to a
12 question, "She has not heard of our case," but then she
13 states, and I quote, I hold biases against Donald
14 Trump, his administration, that may influence my
15 decision-making.

16 Now, we expect defense counsel to try to
17 avoid the sort of political overture of these, but
18 somebody who says they hate Donald Trump probably would
19 not be a suitable juror.

20 THE COURT: All right.

21 MR. DURHAM: Juror No. 45, we raise that
22 because that juror indicated that because of some
23 deliverable deadlines, that might prevent him from
24 giving his full attention or being present for the
25 duration of the trial. I don't know if that's a matter

1 that comes to the Court's attention, but we'd raise it
2 as a possible ground to be excused for cause.

3 THE COURT: All right.

4 MR. DURHAM: Juror No. 49 in answer to
5 Question No. 37 indicated that he is on medication.
6 This relates to his ability to concentrate. He says he
7 is on heart medication, blood pressure medication, and
8 diuretics. I don't know if that would make it
9 difficult for him, but he does indicate that it might
10 affect his ability to concentrate. Perhaps that's
11 something the Court could inquire about, if
12 appropriate.

13 THE COURT: All right.

14 MR. DURHAM: Your Honor was good enough to
15 include in the questionnaire questions related to use
16 of social media. Some people, arguably, are addicted
17 to it at this point.

18 Juror No. 55 indicated that she would find it
19 difficult to stay off of social media and -- I think
20 she may be the only person who indicated that it would
21 be difficult to sit and concentrate or stay off of
22 social media. We just raise that for the Court's
23 consideration.

24 THE COURT: All right.

25 MR. DURHAM: Juror No. 56 indicated that he

1 has a prepaid vacation, preplanned, prepaid vacation
2 the week of October 16th to the 22nd. I think there's
3 a distinct possibility this matter does go into next
4 week. So that may be another person that the Court
5 would want to consider striking for cause.

6 If I could just have one moment, Your Honor.

7 I think that may exhaust our list of folks
8 that we thought the Court might want to consider
9 striking.

10 THE COURT: All right.

11 MR. DURHAM: That's it.

12 Thank you very much, Your Honor.

13 THE COURT: All right. Mr. Sears.

14 MR. SEARS: Your Honor, I omitted one from my
15 list.

16 THE COURT: Yes.

17 MR. SEARS: That's No. 50. That is
18 Ms. Kargbo. I don't know that she needs to be struck
19 for cause at this moment, but I do notice that she also
20 indicated that she has difficulty with English. I
21 think she said that she's able to read, write, and
22 understand English, quote, with difficulty.

23 THE COURT: All right.

24 MR. SEARS: Other parts of the questionnaire,
25 at least from our perspective, look like she might not

1 have fully understood exactly what was being asked. So
2 we would just raise her as someone to inquire about.

3 With regard to the jurors raised by the
4 special counsel, including the one who -- I don't think
5 she said she hated Donald Trump. I think she said she
6 had a bias against the Trump administration. I think
7 that's something the Court can inquire about before
8 making a determination whether or not she can be
9 impartial in this case.

10 THE COURT: All right.

11 MR. SEARS: With regard to 45, 49, and 55, we
12 think it would be appropriate for the Court to inquire
13 of those jurors for the reasons Mr. Durham stated.

14 With regard to 56, which is Mr. Legarda, we
15 would not be opposed to striking him for cause given
16 his prepaid vacation and not running the risk of
17 running into that.

18 THE COURT: All right. Well, I have a few
19 follow-up questions but nothing beyond the
20 questionnaire other than to ask if there's anything
21 that's changed about their answers, anything that may
22 have happened between now and then given a little more
23 information about the case and see if anyone wants to
24 amend anything they've said.

25 How much time for opening statement?

1 MR. DURHAM: Your Honor, we've spoken with
2 defense counsel. I think we both estimate around 25,
3 30 minutes if that's acceptable to the Court.

4 THE COURT: All right. That's fine.

5 All right. That really covers what I have.

6 Let's get back into some of the issues you've
7 all raised with respect to the motions *in limine*.

8 Let's deal with the issue of the scope of
9 testimony with respect to counterintelligence. The
10 Court has already made a preliminary ruling to a
11 certain extent on that. What is the issue beyond the
12 issue that the Court has already ruled on in terms of
13 essentially timing, that we are going to let in the
14 fact but not the details of --

15 MR. DURHAM: Yes, Your Honor. Cognizant of
16 Your Honor's ruling, we've been in touch with counsel
17 to sort of plum the parameters of what would be
18 permissible, what would go beyond what the Court
19 contemplated. That discussion really revolves around
20 what could the government either elicit by way of
21 testimony or open on relating to that investigation.

22 Our reading -- or maybe it was a misreading
23 of the Court's intent -- was that we were not to get
24 into matters relating to Mr. Danchenko having
25 previously solicited classified information or that

1 there was various informant information relating to
2 some of his conduct, etc.

3 But with regard to the fact that there was a
4 previous investigation, that investigation was closed
5 when the FBI mistakenly thought that Mr. Danchenko had
6 left the country, and it was unresolved. We thought
7 that that was on the right side or the line that the
8 Court had cut.

9 Defense counsel indicated that they disagreed
10 with that view, that -- I don't want to speak for them.

11 THE COURT: All right.

12 MR. DURHAM: Just in broadbrush, I think
13 their view was that the government would not be
14 permitted to go beyond, "There was a previous
15 investigation." So that's where the divide is on this.

16 THE COURT: Okay.

17 MR. DURHAM: I'm not certain what defense
18 counsel's view of the matter is this morning. We
19 haven't had a chance to sit and talk about that, but
20 the government would intend to limit its comments to,
21 "There was an investigation. The investigation was
22 closed because, again, the FBI mistakenly thought
23 Mr. Danchenko had left the country. So it wasn't
24 resolved," or, in the alternative, "There was an
25 investigation that was conducted, and it wasn't

1 resolved," but not beyond that.

2 THE COURT: All right. Mr. Sears.

3 MR. SEARS: Well, Your Honor, from our
4 perspective, it was resolved even if it was done on
5 terms that turned out not to be accurate. The
6 problem --

7 THE COURT: What's the difference between it
8 being resolved and it being closed based on his leaving
9 the country?

10 MR. SEARS: I don't know that there is a huge
11 difference, Your Honor. The problem is that it creates
12 the impression that there may have been more there and
13 they just never looked into it because he left the
14 country.

15 We've received in discovery a lot of
16 information from the agents who were involved in that
17 investigation, including the agent who will testify in
18 this case, that had doubts about whether that
19 investigation should have ever been opened in the first
20 place, whether it was based on any concrete
21 information.

22 I think -- I guess our position this
23 morning -- and it was last night as well -- is anything
24 beyond, you know, the point of the investigation kind
25 of gets murky. From our perspective, as we sit here

1 today, we think that it may just be best if we just
2 don't raise that counterintelligence investigation at
3 all, either side, and we have the trial without it. It
4 was ten years before the allegations that occurred
5 here. I don't think there's a need.

6 When I was thinking about the case and the
7 trial back when we were arguing this motion, I kind of
8 was in a different position than I am today. At this
9 point, I think it creates problems. If it comes in, it
10 creates problems either way, and I don't think it's
11 necessary for either party to kind of put on their case
12 or put on their defense in this case.

13 So we'd be asking today that to avoid the
14 issue entirely and the potential that there would be
15 any misapprehension about why it was closed and have
16 the juror speculating about whether there was something
17 more there than it was, it may just be better for
18 everybody that it doesn't come in at all.

19 THE COURT: Mr. Durham, from your
20 perspective, what's the need for --

21 MR. DURHAM: Thank you, Your Honor.

22 We, obviously, will follow whatever the Court
23 directs on this, but we do want to introduce the fact
24 that there was a prior investigation. Because the
25 evidence will be that when Mr. Danchenko was identified

1 as Mr. Steele's primary subsource, Mr. Danchenko is
2 somebody that was already known, not just to the FBI
3 but to the witness who will testify in these matters,
4 Supervisory Intelligence Analyst Brian Auten. We think
5 it is relevant because it does bring some additional
6 information to the floor which is relevant.

7 We're mindful of the Court's concern and
8 defense counsel's concern. If the Court wants us to
9 limit our direct examination or comment on that to the
10 facts that there was a prior investigation, it was
11 closed when they mistakenly thought he had left the
12 country, we will limit it to that.

13 THE COURT: Let me have the time line on
14 this. When was it opened, and when was it closed?

15 MR. DURHAM: That investigation was opened in
16 2009, and then it was closed in September 2010.

17 Just for the Court's background on it, the
18 FBI tracked -- or believed it was tracking
19 Mr. Danchenko's travels. Then for the next, I believe
20 six or seven months, they thought he had left the
21 country; he didn't come back into the country. As a
22 consequence, they closed the file.

23 THE COURT: Right. The first interviews
24 pertaining to the Trump campaign investigation were in
25 January of 2017?

1 MR. DURHAM: Yes, sir. He was -- a three-day
2 interview began on January 24, and it concluded on
3 January 26.

4 THE COURT: All right.

5 MR. DURHAM: I would indicate to the Court
6 that while we do not intend to get into this, unless
7 there's no objection to it, Auten was emailing
8 Baltimore, who was doing the investigation, in 2012.
9 So they had -- Baltimore had the case open in 2009
10 going into 2010. Mr. Danchenko was believed to have
11 left the country in September 2010. The FBI was
12 looking at travel records, entering into the country
13 records for the next six or seven months. They closed
14 the file.

15 Then Mr. Auten himself was inquiring about
16 Mr. Danchenko with the Baltimore office, who had opened
17 the file on Mr. Danchenko in 2012. So when
18 Mr. Danchenko's name came up in December of 2016, he
19 was a person that was known to the FBI. They
20 approached Mr. Danchenko in January of 2017, ultimately
21 interviewed him on the dates that Your Honor inquired
22 about.

23 THE COURT: All right. This would come up
24 with respect to your first witness?

25 MR. DURHAM: It would certainly come up with

1 the first witness. If the Court could rule on it, we'd
2 like to comment on it in opening. We'll obviously give
3 the Court --

4 THE COURT: All right. I'll give you a
5 ruling before opening statement.

6 MR. DURHAM: Thank you, Your Honor.

7 THE COURT: All right. What was the next
8 issue?

9 MR. DURHAM: Maybe the next issue would be
10 the Court inquired about a particular government
11 exhibit. Government Exhibit 109, in fact, relates to
12 the Steele dossier report 2016/95. There's some
13 portions of the agreement between counsel but not
14 complete agreement as to which portions of that report
15 should be admitted as an exhibit in this case.

16 THE COURT: All right. Do you-all need to
17 talk about this among yourselves more?

18 MR. DURHAM: I think we've discussed it at
19 some length.

20 THE COURT: All right. I'll have to look at
21 the report, and you will have to isolate for me the
22 portions of the report that are at issue.

23 MR. DURHAM: What might be helpful to the
24 Court -- in looking at the report, we can describe --
25 and counsel, again, will correct me if I'm wrong.

1 Oh, I'm sorry. You don't have a copy.

2 (Documents are passed up to the Court.)

3 MR. DURHAM: So just by way of background,
4 Your Honor, this is a particular report that has in the
5 upper right-hand corner handwritten 8-29-16. It makes
6 specific reference to Source E. What might be helpful
7 to the Court in understanding the arguments of
8 counsel -- I think Your Honor will see that virtually
9 all of the information in this report is attributed to
10 Source E. However, in the second page of the report,
11 in paragraph 6, the report makes reference to a
12 separate source with direct knowledge. So all of it is
13 Source E with the exception, I think, of --

14 THE COURT: Where is the reference that
15 you're referring to on the second page?

16 MR. DURHAM: Yes. Paragraph No. 6 says,
17 "Finally, regarding Trump's claimed minimal investment
18 profile in Russia, a separate source with direct
19 knowledge said this had not been for want of trying."

20 THE COURT: That's what's at issue on this
21 report?

22 MR. DURHAM: So that's some other source.
23 The parties are in agreement that paragraph 6 should
24 not go in.

25 THE COURT: All right.

1 MR. DURHAM: Now, separate from that, Your
2 Honor, in looking at the first page of the report, the
3 Court will note that the second bullet point
4 references, "Trump associate admits Kremlin behind
5 recent appearance of DNC emails on WikiLeaks as means
6 of maintaining plausible deniability."

7 Then with respect to paragraph 2 under the
8 detail, again, there are references to WikiLeaks.

9 So while the government is of the view that
10 this all comes from the same report and is attributed
11 to Source E, we are agreeable to redacting that second
12 bullet point under the summary and paragraph 2 because
13 the evidence will be -- assuming they would be relevant
14 and appropriate, the evidence will be that when
15 Mr. Danchenko was interviewed and asked about this
16 report, he had said that he didn't recall anything
17 being told to him by Source E concerning WikiLeaks.

18 We don't think that's dispositive because he
19 now indicates he has a failure of recollection. But
20 that having been said, we were willing to compromise
21 and redact, again, that second bullet point and
22 paragraph 2 to just eliminate that issue.

23 We believe the balance of the report, all
24 which is attributable to Source E, is admissible, and
25 the testimony in evidence will be that when

1 Mr. Danchenko was shown this report by the agents when
2 he was being interviewed in January of 2017, he
3 identified or said that Source E looks like that's
4 Millian. And he was the person that purportedly was
5 talking to Millian.

6 THE COURT: All right.

7 MR. SEARS: Your Honor, this is a recurring
8 problem in this investigation, is that the agents are
9 very careful about how they asked the questions and
10 confirm whether this information in this report, all of
11 it came from -- it may have come from Sergei Millian.
12 It may have come from someone Mr. Danchenko thought was
13 Sergei Millian because the reference to Source E --
14 some of the information in this report Mr. Danchenko
15 recalls coming up during the conversation with the
16 anonymous caller. The problem is that the rest of it
17 does not.

18 So when he's saying Source E could be the
19 person I thought was Sergei Millian, it's because it
20 has some of that information he remembers from that
21 phone call, but he never says that the rest of the
22 information came from that phone call. He never says
23 that. They never asked him.

24 In fact -- and I can hand this up to the
25 Court as well -- the electronic, which is essentially a

1 302 of Mr. Danchenko's interviews in January -- when
2 he's first asked about this specific report on page 20,
3 the agent writes, "This report involves reporting from
4 Source E, reporting which Danchenko ties, at least in
5 part, to Sergei Millian." Then he related the story
6 about the contact with Millian or the person he
7 believed to be Sergei Millian.

8 Then later, on a later date, in those first
9 three days in January, again, they ask him about that
10 report, and he says that Source E in the report sounds
11 like it is from his conversation. So from our
12 perspective, there's a portion of that report that he's
13 attributing to the conversation he had with the
14 anonymous caller.

15 But the special counsel is seeking to
16 introduce this entire report to suggest that
17 Mr. Danchenko received all that information from the
18 person he believed was Source E, which he's never said.
19 He was never asked that specifically, and it's going to
20 create the impression, I think -- the argument is going
21 to be it couldn't have been one 10 to 15-minute phone
22 call because all of this information ended up in the
23 dossier.

24 Source E could have been a source directly to
25 Steele. It could have been a source through other

1 subsources. We just don't know, and the only part of
2 this report that Mr. Danchenko recognizes as being part
3 of his conversation is a very limited part.

4 THE COURT: That's clear from his interview?

5 MR. SEARS: I believe it's clear from his
6 interview. The agent writes that at least in part --
7 and the only part they talk about -- and I can hand
8 this up to the Court. It is flagged on page 20 and
9 page 37.

10 (Documents are passed up to the Court.)

11 THE COURT: All right.

12 MR. SEARS: So from our perspective,
13 Mr. Danchenko was never asked the question, "Well,
14 which parts? Which parts are attributable to the phone
15 call or not?" So it's going to create a misimpression
16 that all that information came from a phone call that
17 Mr. Danchenko had when he never said that.

18 THE COURT: All right. Mr. Durham.

19 MR. DURHAM: Just briefly if I might, Your
20 Honor.

21 THE COURT: Yes.

22 MR. DURHAM: When the Court reviews the
23 pertinent portions of the report, the Court will see
24 for itself that this is being attributed by
25 Mr. Danchenko to Mr. Millian. A couple of relevant

1 things. Separate and apart from this report, Report
2 No. 95, we believe that the testimony from
3 Mr. Danchenko's handling agent, Special Agent Helson,
4 will be that he also talked to Mr. Danchenko about the
5 information contained in this report, and Mr. Danchenko
6 attributed it to Sergei Millian. I don't want to
7 overstate that. We'll have to see what the testimony
8 is.

9 THE COURT: Right.

10 MR. DURHAM: We expect that Helson will
11 testify that he discussed this with Mr. Danchenko and
12 that Mr. Danchenko identified this as the information
13 that came from Mr. Millian.

14 THE COURT: All right.

15 MR. DURHAM: It's quite clear that it is
16 clearly admissible.

17 Just for Your Honor's benefit, when the Court
18 looks at the discussion of this portion, the
19 information that begins -- I think counsel said it's
20 flagged. So the Court obviously can find it, but it
21 begins at the bottom of page 19.

22 THE COURT: Nineteen?

23 MR. DURHAM: Yes, sir, Dossier Report 216/95.
24 Then it goes over to the top of page 21.

25 Most of the explanation is about this

1 purported anonymous call. But read in context because
2 the bureau goes back to it -- the bureau agents go back
3 to it the next day. So when Your Honor sees what I'm
4 sure counsel has tabbed as the second portion of the
5 report, which begins on page 35 and then onto 36 and
6 37, the Court can see the bureau inquired into it. It
7 leaves little doubt that the information that's in this
8 report was attributed by Mr. Danchenko to Mr. Millian.

9 As you'll see, there's information in the
10 report related to WikiLeaks. Because the defendant
11 doesn't acknowledge remembering that, we're agreeable
12 to taking that out.

13 THE COURT: Well, it seems to me I will have
14 to rule on this within the context of the agent's
15 testimony and what kind of foundation you can lay that
16 links specific portions of this memo to what
17 Mr. Danchenko said or didn't say. So I'll rule on it
18 within the context of his testimony.

19 MR. DURHAM: Thank you, Your Honor.

20 THE COURT: All right. What else do we have?

21 MR. DURHAM: Probably counsel will want to,
22 in the first instance, address their motion *in limine*
23 to try to exclude some information.

24 (Counsel confer.)

25 MR. DURHAM: Counsel indicates it's fine for

1 us to go ahead if it's okay with the Court.

2 This is the context, Your Honor. The
3 evidence in this case will show that there are two
4 series of emails that --

5 THE COURT: These are the emails that you
6 want to get in that he didn't turn these over?

7 MR. DURHAM: Exactly.

8 THE COURT: Right.

9 MR. DURHAM: Some of them relate to
10 Mr. Millian, his communications with Millian, email
11 communications, and then the second group deal with
12 emails that he had exchanged with Charles Dolan. As we
13 understand the defendant's argument, at least in
14 part -- they say, "Well, this just goes to propensity."
15 It doesn't. It has nothing to do --

16 THE COURT: Well, I think their argument was
17 he was never specifically asked for them.

18 MR. DURHAM: He was never specifically asked
19 for them. But we believe that the evidence in the case
20 is going to establish that the agents had made
21 abundantly clear both in January 2017, when
22 Mr. Danchenko was interviewed, and then later when he
23 was meeting with Mr. Helson, who is the handling agent.

24 THE COURT: Right.

25 MR. DURHAM: It was made abundantly clear

1 that they were asking and seeking any and all
2 information that he had relating to dossier matters,
3 anything that corroborate them, any information there,
4 any of the sourcing and the like that was in there, any
5 of the sourcing and the like. There was no
6 misunderstanding about what was being sought and asked
7 for.

8 Indeed, the evidence will show that with
9 regard to the January 2017 three-day interview, that
10 Mr. Danchenko did on his own produce a particular
11 email. It's an email dated August 24, 2016, where he
12 had sent something to Mr. Zlodorev. So I mean, in that
13 context, it's absolutely clear that the defendant knew
14 what the investigators were asking for and at least in
15 that instance he decided to produce one, but not all,
16 of the relevant emails.

17 THE COURT: Do the emails -- I know they
18 pertain, in part, to whether he spoke with Millian. Do
19 they relate to Dolan as well?

20 MR. DURHAM: There's a separate series of
21 exchange with Mr. Dolan. This will maybe help the
22 Court in perspective. Millian emails, those were
23 taking place beginning on July 21, 2016, and then they
24 continue, if you include the one he did provide to the
25 FBI, through August 24, 2017.

1 The Dolan emails are a more limited period of
2 time. They begin on August 19, 2016, and then just
3 continue through the next day, August 20.

4 THE COURT: Right. In terms of the substance
5 of the Millian-related emails, the one that he did turn
6 over, from your perspective, evidences that he had
7 never spoken to Millian. Are the substance of the
8 other ones any different than that?

9 MR. DURHAM: Yes, Your Honor. What the
10 evidence will be relating to the Dolan emails is that
11 the bureau had made it clear on an ongoing basis that
12 they were interested in learning about any of the
13 sourcing for the dossier.

14 THE COURT: All right.

15 MR. DURHAM: And then, most particularly on
16 June 15, 2017, Mr. Danchenko is specifically asked
17 about Charles Dolan. Because by that point in time,
18 the bureau investigators had developed information
19 relating to Mr. Dolan where they believed that
20 Mr. Dolan might be a source of information or might
21 have information pertinent to their investigation.

22 So on June 15, 2017, the Crossfire Hurricane
23 had merged into Mr. Mueller's investigation. Those
24 investigators specifically asked Mr. Helson, the
25 handler, to ask Mr. Danchenko if he knew Charles Dolan.

1 And one of the alleged counts is that he said, "No,"
2 and --

3 THE COURT: He knew of him.

4 MR. DURHAM: That's open.

5 So those emails are directly pertinent to
6 proving up that account, that he, in fact, did have
7 communications with Dolan. He did know that Mr. Dolan
8 had provided information. Which two days later Dolan
9 provided the information to Mr. Danchenko on August 20,
10 2016. Two days later that information shows up in a
11 dossier report, 2016/105.

12 THE COURT: Right. But you want to do more
13 than get the fact of these emails in; you want to get
14 in that he didn't turn them over?

15 MR. DURHAM: That's correct. That he
16 should've turned them over, and he didn't turn them
17 over. It goes to his state of mind as to whether or
18 not he was answering the questions truthfully when they
19 were posed to him by Special Agent Helson.

20 THE COURT: All right. I understand.

21 MR. DURHAM: Thank you, Your Honor.

22 THE COURT: All right. Anything more on
23 this, Mr. Sears?

24 MR. SEARS: Your Honor, I understand the
25 significance of the arguments that special counsel is

1 trying to make in this case, and I'll try to put aside
2 why I don't agree that he had any obligation. My
3 understanding of omission or false statement by
4 concealment is there has to be a duty to disclose.

5 THE COURT: Their argument is it doesn't go
6 to the falsity; it goes to his intent.

7 MR. SEARS: Right. You're going to have to
8 see the facts, I guess, to some extent, Your Honor.

9 THE COURT: Right.

10 MR. SEARS: My concern is that the jury is
11 going to convict Mr. Danchenko for what he didn't
12 provide versus what he said. He's on trial for what he
13 said, not for what he didn't provide. That's going to
14 be complicated when half the evidence in this case is
15 going to be, well, he could've sent that email had he
16 wanted to even though he was never asked to provide
17 that information, even though he told them about it.
18 That's really the concern I have, is that the jury is
19 going to convict him on a theory that wasn't charged.

20 So in this context, I think the fact that
21 these were voluntary interviews, that they never asked
22 him for his phone, they never asked for his emails,
23 they never asked for anything. He's voluntarily
24 providing things. A lot of these emails he didn't even
25 have anymore. They had been deleted beforehand. So he

1 couldn't have provided them had he wanted to, but he
2 told them about it. He told them about the July 18
3 email with Millian as well. Again, I don't want to get
4 into the arguments of the case and argue the case now.

5 THE COURT: Right.

6 MR. SEARS: But under that context, I think
7 it's unfair, first of all, for Mr. Danchenko to be held
8 responsible for not turning over things.

9 THE COURT: Are you objecting to the emails
10 themselves coming in?

11 MR. SEARS: No. I think they are relevant
12 for that reason. Our concern, again, Your Honor is
13 that the jury is -- our concern really is that special
14 counsel is going to argue at some point potentially,
15 whether it's opening or closing, that by not turning
16 over things he wasn't specifically asked to turn over,
17 that goes to his guilt in this case.

18 It's a concern. It's charging a false
19 statement case by affirmative representation but then
20 trying to backdoor a concealment theory, which would be
21 very difficult to prove in this case because there was
22 no duty to disclose. That's an element on concealment.
23 Typically, it's an allocation where you're required to
24 disclose something in your background, questionnaire,
25 disclose a prior felony conviction, something along

1 those lines.

2 THE COURT: All right. I understand.

3 MR. DURHAM: Just briefly, Your Honor?

4 THE COURT: Yes.

5 MR. DURHAM: I think -- counsel says there is
6 no -- well, whatever the defense view is on the need to
7 disclose this, the evidence will also include an
8 immunity agreement that was entered into by the
9 defendant with the government in which he was told
10 specifically that he agreed to make full and complete
11 disclosure of information.

12 But separate and apart from that, the
13 government does not intend to argue that the defendant
14 is guilty of the crimes of which he's charged because
15 he failed to disclose these. Rather, that evidence is
16 evidence of the fact that he knowingly and willingly
17 made false statements, and it's evidence of what his
18 state of mind was and his intention not to tell the
19 truth on these matters.

20 THE COURT: All right. I think that covers
21 it. I think that's all of the issues.

22 MR. DURHAM: Let me see. The only remaining
23 issue, as we had indicated, we recently received some
24 emails that the defense, as we understand it, intends
25 to offer at trial or to perhaps use in

1 cross-examination. It's not absolutely clear. That's
2 not through the fault of the defense. It's not clear
3 on what the intention is. Essentially, these emails
4 that we received either last night or this morning --

5 Was it last night?

6 MR. ONORATO: It was 12:01.

7 MR. DURHAM: So it was technically today,
8 Your Honor. They were email exchanges that were in
9 Russian that have been translated, and they're between
10 where it involved Mr. Zlodorev and Mr. Millian. Your
11 Honor might recall that we had offered some emails --
12 intended to offer some emails between those same
13 individuals. There was an objection on the part of the
14 defense that it was hearsay and the like, and the Court
15 ruled those aren't admissible. Now, here the defense
16 is. They have emails between Zlodorev and Millian,
17 which we understand they want to offer as evidence in
18 this case.

19 We believe, for the same reason, it's pure
20 hearsay. I don't know that they can lay any foundation
21 through any government witness, that the government
22 witnesses were aware of it, know anything about it, and
23 the like. So before they're used in any way, offered
24 as an exhibit or somehow used in cross-examination
25 along the lines of are you aware of such and such,

1 which would be a fact not in evidence but suggesting to
2 the jury that there's something, that there ought to be
3 some proper basis established on the record for the use
4 of those documents.

5 THE COURT: All right.

6 MR. ONORATO: Thank you, Your Honor.

7 Your Honor, there were a number of documents
8 that the government does not have. What I think makes
9 sense is for me to have a conversation with the special
10 counsel team about our use.

11 THE COURT: All right.

12 MR. ONORATO: But the information that's been
13 proffered, it's clear on the issue of materiality. It
14 has nothing to do with proving the truth of the matter.
15 So, for instance, it's Mr. Millian boasting that he's
16 done deals with Mr. Trump for years in Russia. It's
17 Mr. Millian providing his cell phone number to people,
18 the evidence that the government hasn't produced
19 otherwise, just to show that he had the ability to make
20 phone calls in this time frame. So none of it is to
21 prove that there's truth to the issues, rather just to
22 go to the issue of materiality.

23 THE COURT: How does that not go to truth?

24 MR. ONORATO: So, Your Honor, it's fact.

25 Again, public documents that Mr. Millian has talked

1 about. The government started investigating him based
2 upon his purported boasts about his connections to the
3 Trump campaign.

4 THE COURT: The fact that he sent the email,
5 it goes to materiality, is separate and apart from what
6 he was saying?

7 MR. ONORATO: Again, just to the agents. The
8 agents are going to come in and say, "My goodness, had
9 I known that it wasn't Mr. Millian who was the
10 caller" -- because that's the theory, right.

11 THE COURT: Right.

12 MR. ONORATO: The government wasn't going to
13 shut down the investigation. So you're right, Millian,
14 throw it out, garbage, not material. They had so much
15 evidence about what Mr. Millian was doing in that time
16 frame that no matter what Mr. Danchenko said, they were
17 going to continue to investigate him based upon what he
18 was saying --

19 THE COURT: So these are emails they had in
20 their possession?

21 MR. ONORATO: They produced them to us. I
22 had no idea they existed, and I'll talk it over with
23 special counsel.

24 THE COURT: All right.

25 MR. DURHAM: Thank you, Your Honor. I think

1 that exhausts the list.

2 THE COURT: All right. Good.

3 All right. Well, what we'll do is we'll
4 proceed in a few minutes with jury selection. I'll
5 rule on some of these issues. I'll rule on the
6 counterintelligence investigation issue before opening
7 statement, and I think the other ones I'll take up
8 within the context of the witnesses that they relate
9 to.

10 All right.

11 MR. SEARS: Your Honor --

12 THE COURT: Yes.

13 Also, you may not have had a chance to think
14 about this, Mr. Durham, but what about these articles
15 they want to get in that shows all the information
16 about Manafort was public? Do you want to think about
17 it?

18 MR. DURHAM: I'll think about it. My initial
19 reaction to it, Your Honor, is that if the defense can
20 establish somehow that these were matters that were
21 known to Mr. Danchenko, not just in general but they
22 were known to Mr. Danchenko -- because the evidence
23 will be that Dolan responded to the defendant's request
24 for any thoughts or rumors about Manafort.

25 Dolan responds saying that he reportedly had

1 had a drink with a GOP person and this is what he
2 learned. And he attached the a political article to
3 that email.

4 As I indicated earlier, then two days later
5 essentially the information from Dolan shows up in the
6 report.

7 THE COURT: Right.

8 MR. DURHAM: So if the defense is going to
9 establish that Mr. Danchenko was aware of these
10 articles, then I think that there's a good argument for
11 their admissibility. But absent proof that
12 Mr. Danchenko, who asked for more information from
13 Dolan, got information from Dolan and then information
14 shows up in the dossier, I don't see how these articles
15 are admissible in this proceeding.

16 THE COURT: All right.

17 MR. SEARS: Your Honor, our position on that
18 is that that information in that report, that single
19 paragraph in one of the company reports that were
20 issued that related to Mr. Manafort leaving the
21 campaign could have come from anyone because it was so
22 widespread. I believe one of the agents will testify
23 that that information was everywhere.

24 Mr. Danchenko was never asked about that
25 paragraph in four years, never asked about the source

1 of that paragraph, never directly asked, "Where did you
2 get this information?" He was never asked about that
3 report in its entirety in four years.

4 And so there's no evidence that Mr. Danchenko
5 claimed that he got that from some other source. So
6 from our perspective, the fact that it's all over the
7 news for months leading up to that day shows that it
8 could have come from anyone. He may have even
9 forgotten about it because it was everywhere. You
10 might not know where you got that information from even
11 if it was from him, which I don't think they can
12 establish.

13 So for that reason, we think it's important
14 that the jury understands that this information was
15 everywhere at that time. It supports Mr. Dolan's
16 testimony, which I think will be that it was all public
17 information at the time.

18 The article that Mr. Dolan links to in the
19 email to Mr. Danchenko is somewhat limited in the
20 information it has. It doesn't really talk, as I
21 recall, about Mr. Lewandowski and Mr. Lewandowski's
22 ability to still be talking to President Trump and be a
23 little behind the scenes on getting Manafort axed from
24 the campaign. These articles leading up to that week,
25 that's all they talk about.

1 So I think it's important that there was
2 other information out there about that fact that does
3 end up in the report could have come from another
4 source, not just --

5 THE COURT: You don't want to use these
6 during your cross of Dolan or one of the agents or
7 during your case?

8 MR. SEARS: So, Your Honor, from our
9 perspective, we would like to get it in through a
10 stipulation that they existed and argue it. I think we
11 could cross Dolan about it. We could cross Special
12 Agent Auten about it. I don't know that they've seen
13 these specific articles so I don't know they could
14 necessarily say, "Oh, yes, I remember that."

15 I think it's evidence that we could admit
16 that when we do our closing argument, we can say this
17 information was widespread. You heard from Mr. Auten
18 that he knew this information was public knowledge at
19 the time he heard from Mr. Dolan. There were dozens of
20 articles. That's how we would --

21 THE COURT: You anticipate that kind of
22 testimony from those two witnesses?

23 MR. SEARS: Yes, I do.

24 THE COURT: All right. The Court will deal
25 with it.

1 All right. Anything else?

2 MR. DURHAM: May I please, Your Honor?

3 THE COURT: Yes.

4 (Counsel confer.)

5 MR. DURHAM: We appreciate Your Honor's
6 willingness to try to resolve some of these things as
7 soon as possible. I don't want to run afoul of
8 anything the Court is going to rule on or raise
9 concerns with the defense, but we did intend to include
10 in opening a reference to Mr. Danchenko's failure to
11 produce these emails. I'm not going to argue on that.

12 THE COURT: I'll give you some guidance on
13 that before opening.

14 MR. DURHAM: Thank you, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. DURHAM: No, sir.

17 THE COURT: All right. Why don't we take a
18 short recess. We'll bring up the jury.

19 Ladies and gentlemen, unfortunately, we're
20 going to need this space for the jury panel that's
21 coming in. We have set up a remote video feed in
22 Courtroom 1000 that you will be able to see these
23 proceedings. Once we select a jury, I'm sure there
24 will be room back here in the courtroom for you.

25 With that, we'll stand in a short recess.

1 (Recess from 10:01 a.m. until 10:27 a.m.)

2 (The jury is not present.)

3 THE CLERK: The Court calls Criminal Case
4 2019-cr-245, *United States v. Igor Danchenko*. This
5 case comes on for trial by jury.

6 Counsel, will you please note your
7 appearances for the record.

8 MR. DURHAM: Good morning, Your Honor. John
9 Durham for the United States. At counsel table with me
10 is Assistant Special Counsel Michael Keilty, Assistant
11 Special Counsel Brittain Shaw. At the rear table is
12 Paralegal Specialist Kori Arsenault, and then the case
13 agent in this matter, Supervisory Special Agent Ryan
14 James of the FBI.

15 THE COURT: Welcome.

16 MR. DURHAM: Thank you, Your Honor.

17 MR. SEARS: Good morning, Your Honor. Stuart
18 Sears on behalf of Mr. Danchenko, who is present in the
19 courtroom with me. Along with me is Mr. Onorato. We
20 also have three paralegals, Matt Milzman, Charlie Tent,
21 and Grace McMahon.

22 THE COURT: Welcome to everyone.

23 Ladies and gentlemen, I'm Judge Trenga, and
24 on behalf of all the judges of the Eastern District, I
25 welcome you here to the courthouse.

1 We are going to begin by calling the role.
2 As you hear your name, please say "here" or "present."
3 Please try to remember the juror number that's
4 associated with your name, not the one on your summons
5 but the one that's associated when your name is called.
6 Because as we go through this process, I will ask some
7 questions. And if you have to answer, I'll ask you to
8 identify yourself by your name and your number.

9 We'll begin with the role, please.

10 THE CLERK: Ladies and gentlemen of the jury,
11 as I call your name, please stand, answer present, and
12 be seated as the next name is called.

13 Juror No. 1, Kyle Addie.

14 PROSPECTIVE JUROR ADDIE: Here.

15 THE CLERK: Juror No. 2, Brian Antol.

16 PROSPECTIVE JUROR ANTOL: Present.

17 THE CLERK: Juror No. 3, Terence Beck.

18 PROSPECTIVE JUROR BECK: Present.

19 THE CLERK: Juror No. 4, Betsy Bell.

20 PROSPECTIVE JUROR BELL: Present.

21 THE CLERK: Juror No. 5, Shailja Bhatia.

22 PROSPECTIVE JUROR BHATIA: Present.

23 THE CLERK: Juror No. 6, Jerome Bishop.

24 PROSPECTIVE JUROR JEROME BISHOP: Present.

25 THE CLERK: Juror No. 7, Raymond Bishop, Jr.

1 PROSPECTIVE JUROR RAYMOND BISHOP: Here.

2 THE CLERK: Juror No. 8, Kasey Borden.

3 PROSPECTIVE JUROR BORDEN: Here.

4 THE CLERK: Juror No. 10, Lucinda Brunson;
5 Juror No. 10, Lucinda Brunson.

6 (No response.)

7 THE CLERK: Juror No. 11, Catiria Bushnell.

8 PROSPECTIVE JUROR BUSHNELL: Present.

9 THE CLERK: Juror No. 12, Alicea Carimbocas.

10 PROSPECTIVE JUROR CARIMBOCAS: Present.

11 THE CLERK: Juror No. 13, Epifanio Clarin,

12 III.

13 PROSPECTIVE JUROR CLARIN: Here.

14 THE CLERK: Juror No. 14, Donald Connors, Jr.

15 PROSPECTIVE JUROR CONNORS: Present.

16 THE CLERK: Juror No. 15, Philip Cook.

17 PROSPECTIVE JUROR COOK: Here.

18 THE CLERK: Juror No. 16, Ian Cosio, I; Juror
19 No. 16, Ian Lucas Cosio, I.

20 (No response.)

21 THE CLERK: Juror No. 17, Clare Cranshaw.

22 PROSPECTIVE JUROR CRANSHAW: Here.

23 THE CLERK: Juror No. 18, Sharita Crawford.

24 PROSPECTIVE JUROR CRAWFORD: Present.

25 THE CLERK: Juror No. 19, Paul Cross-Durrant.

1 PROSPECTIVE JUROR CROSS-DURRANT: Present.

2 THE CLERK: Juror No. 20, Mary Cruz.

3 PROSPECTIVE JUROR CRUZ: Present.

4 THE CLERK: Juror No. 21, Meghan Dahnert.

5 PROSPECTIVE JUROR DAHNERT: Present.

6 THE CLERK: Juror No. 22, Jennifer Dalrymple.

7 PROSPECTIVE JUROR DALRYMPLE: Dalrymple,

8 here.

9 THE CLERK: Juror No. 23, Max Daniel.

10 PROSPECTIVE JUROR DANIEL: Present.

11 THE CLERK: Juror No. 24, Samantha Davis.

12 PROSPECTIVE JUROR DAVIS: Present.

13 THE CLERK: Juror No. 25, Amy Dickinson.

14 PROSPECTIVE JUROR DICKINSON: Here.

15 THE CLERK: Juror No. 26, Adrienne Edmond.

16 PROSPECTIVE JUROR EDMOND: Present.

17 THE CLERK: Juror No. 27, Nathaniel Eom.

18 PROSPECTIVE JUROR EOM: Here.

19 THE CLERK: Juror No. 28, Marta Erceg.

20 PROSPECTIVE JUROR ERCEG: Present.

21 THE CLERK: Juror No. 29, Katherine Estes.

22 PROSPECTIVE JUROR ESTES: Present.

23 THE CLERK: Juror No. 30, Alan Evans.

24 PROSPECTIVE JUROR EVANS: Present.

25 THE CLERK: Juror No. 31, David Felton.

1 PROSPECTIVE JUROR FELTON: Here.
2 THE CLERK: Juror No. 32, Michael Fischer.
3 PROSPECTIVE JUROR FISCHER: Present.
4 THE CLERK: Juror No. 33, Chandler Fitch.
5 PROSPECTIVE JUROR FITCH: Here.
6 THE CLERK: Juror No. 34, Harold Flanagan.
7 PROSPECTIVE JUROR FLANAGAN: Here.
8 THE CLERK: Juror No. 35, Mohsen Fouada.
9 PROSPECTIVE JUROR FOUDA: Here.
10 THE CLERK: Juror No. 36, Kelsey Gallagher.
11 PROSPECTIVE JUROR GALLAGHER: Present.
12 THE CLERK: Juror No. 37, Joel Greene.
13 PROSPECTIVE JUROR GREENE: Here.
14 THE CLERK: Juror No. 38, Matthew Haber.
15 PROSPECTIVE JUROR HABER: Here.
16 THE CLERK: Juror No. 39, Christophe Hall.
17 PROSPECTIVE JUROR HALL: Here.
18 THE CLERK: Juror No. 40, Christophe Hammel.
19 PROSPECTIVE JUROR HAMMEL: Here.
20 THE CLERK: Juror No. 41, Paul Hamrick.
21 PROSPECTIVE JUROR HAMRICK: Here.
22 THE CLERK: Juror No. 42, Sarah Hendricks.
23 PROSPECTIVE JUROR HENDRICKS: Present.
24 THE CLERK: Juror No. 43, Richard Hooker.
25 PROSPECTIVE JUROR HOOKER: Present.

1 THE CLERK: Juror No. 44, Holliday Hurd.

2 PROSPECTIVE JUROR HURD: Present.

3 THE CLERK: Juror No. 45, Sumanth Jagga.

4 PROSPECTIVE JUROR JAGGA: Present.

5 THE CLERK: Juror No. 46, Melody Johnson.

6 PROSPECTIVE JUROR MELODY JOHNSON: Present.

7 THE CLERK: Juror No. 47, Valerie Johnson.

8 PROSPECTIVE JUROR VALERIE JOHNSON: Present.

9 THE CLERK: Juror No. 48, Raymond Johnson,

10 III.

11 PROSPECTIVE JUROR RAYMOND JOHNSON: Here.

12 THE CLERK: Juror No. 49, Edd Joseph.

13 PROSPECTIVE JUROR JOSEPH: Present.

14 THE CLERK: Juror No. 50, Nancy Kargbo.

15 PROSPECTIVE JUROR KARGBO: Present.

16 THE CLERK: Juror No. 51, Condence Keefe.

17 PROSPECTIVE JUROR KEEFE: Present.

18 THE CLERK: Juror No. 52, Kathleen Kelly.

19 PROSPECTIVE JUROR KELLY: Here.

20 THE CLERK: Juror No. 53, John Kiefer.

21 PROSPECTIVE JUROR KIEFER: Present.

22 THE CLERK: Juror No. 54, Hilda Layne.

23 PROSPECTIVE JUROR LAYNE: Present.

24 THE CLERK: Juror No. 55, Julia Leedy.

25 PROSPECTIVE JUROR LEEDY: Here.

1 THE CLERK: Juror No. 56, Daniel Legarda.

2 PROSPECTIVE JUROR LEGARDA: Present.

3 THE CLERK: Juror No. 57, Adam Lewis; Juror
4 No. 57, Adam Lewis.

5 (No response.)

6 THE CLERK: Juror No. 58, Zakaria Mawloud.

7 PROSPECTIVE JUROR MAWLOUD: Present.

8 THE CLERK: Juror No. 59, Joseph Messina.

9 PROSPECTIVE JUROR MESSINA: Present.

10 THE CLERK: Juror No. 60, John Michel.

11 PROSPECTIVE JUROR MICHEL: Here.

12 THE CLERK: Juror No. 61, John Mooney.

13 PROSPECTIVE JUROR MOONEY: Present.

14 THE CLERK: Juror No. 62, Anthony Moore.

15 PROSPECTIVE JUROR MOORE: Present.

16 THE CLERK: Juror No. 63, Alina, and I'll
17 spell your last name, N-H-O-U-Y-V-A-N-I-S-V-O-N-G.

18 PROSPECTIVE JUROR NHOUYVANISVONG: Present.

19 THE CLERK: How do you pronounce that,
20 please?

21 PROSPECTIVE JUROR NHOUYVANISVONG: Nhouyvaniv
22 ong.

23 THE CLERK: Thank you.

24 Juror No. 64, Kirstin Nickerson.

25 PROSPECTIVE JUROR NICKERSON: Present. Here.

1 THE CLERK: Juror No. 65, James Nowotny.
2 PROSPECTIVE JUROR NOWOTNY: Present.
3 THE CLERK: Juror No. 66, Nancy Osborne.
4 PROSPECTIVE JUROR OSBORNE: Present.
5 THE CLERK: Juror No. 67, Joseph Osei.
6 PROSPECTIVE JUROR OSEI: Present.
7 THE CLERK: Juror No. 68, Melanie Padayachee.
8 PROSPECTIVE JUROR PADAYACHEE: Padayachee,
9 present.
10 THE CLERK: Thank you.
11 Juror No. 69, Stuart Pandza.
12 PROSPECTIVE JUROR PANDZA: Present.
13 THE CLERK: Juror No. 70, Michele Pecora.
14 PROSPECTIVE JUROR PECORA: Here.
15 THE CLERK: Juror No. 71, Pedro Permuy.
16 PROSPECTIVE JUROR PERMUY: Here.
17 THE CLERK: Juror No. 72, Krystyna Reign.
18 PROSPECTIVE JUROR REIGN: Krystyna, present.
19 THE CLERK: Thank you.
20 Juror No. 73, Roen Riehl.
21 PROSPECTIVE JUROR RIEHL: Present.
22 THE CLERK: Thank you.
23 Juror No. 74, Ann Saliski.
24 PROSPECTIVE JUROR SALISKI: Present.
25 THE CLERK: Juror No. 75, Susan Sanderson.

1 PROSPECTIVE JUROR SANDERSON: Present.

2 THE CLERK: Juror No. 76, Andrew Schober.

3 PROSPECTIVE JUROR SCHOBER: Present.

4 THE CLERK: Juror No. 77, Hadi Shakeri.

5 PROSPECTIVE JUROR SHAKERI: Present.

6 THE CLERK: Juror No. 78, Anquannet Skyler.

7 PROSPECTIVE JUROR SKYLER: Present.

8 THE CLERK: Juror No. 79, Carol Smith.

9 PROSPECTIVE JUROR SMITH: Present.

10 THE CLERK: Juror No. 80, Rohan Sobti.

11 PROSPECTIVE JUROR SOBTI: Present.

12 THE CLERK: Juror No. 81, Emma Stump.

13 PROSPECTIVE JUROR STUMP: Present.

14 THE CLERK: Juror No. 82, Gloria Thomas.

15 PROSPECTIVE JUROR THOMAS: Present.

16 THE CLERK: Juror No. 83, Malcolm Thompson.

17 PROSPECTIVE JUROR THOMPSON: Present.

18 THE CLERK: Juror No. 84, Marie

19 Toriello-Johnson.

20 PROSPECTIVE JUROR TORIELLO-JOHNSON: Present.

21 THE CLERK: Juror No. 85, Alexander Treadway.

22 PROSPECTIVE JUROR TREADWAY: Present.

23 THE CLERK: Juror No. 86, Enebish Uuganbayar.

24 PROSPECTIVE JUROR UUGANBAYAR: Present.

25 THE CLERK: Juror No. 87, Jake Valdez.

1 PROSPECTIVE JUROR VALDEZ: Here.

2 THE CLERK: Juror No. 88, Scott Valentin.

3 PROSPECTIVE JUROR VALENTIN: Present.

4 THE CLERK: Juror No. 89, Kathleen Van Dyke.

5 PROSPECTIVE JUROR VAN DYKE: Present.

6 THE CLERK: Juror No. 90 Alexis Wankowski.

7 PROSPECTIVE JUROR WANKOWSKI: Present.

8 THE CLERK: Juror No. 91, Fengrui Zhang.

9 PROSPECTIVE JUROR ZHANG: Here.

10 THE CLERK: Is there any juror present whose
11 name I did not call?

12 (No response.)

13 THE COURT: Thank you.

14 The clerk will issue a summons for those
15 persons whose names were called but did not appear.

16 THE CLERK: Ladies and gentlemen of the jury,
17 will you please stand, raise your right hand, and
18 respond "I shall" after the oath is administered.

19 (The oath is administered.)

20 THE CLERK: Thank you. Please be seated.

21 THE COURT: Thank you.

22 Ladies and gentlemen, as you know, you have
23 been summonsed as a prospective juror in the criminal
24 case of the *United States v. Igor Danchenko*.

25 Mr. Danchenko is seated to my right together with his

1 counsel, and the government is to my -- I'm sorry.

2 Mr. Danchenko is seated to my left along with his
3 counsel, and the government is seated to my right.

4 Twelve of you will be selected as jurors, and
5 four of you will be selected as alternates to any of
6 the twelve jurors who cannot complete their service.
7 But before we begin that selection process, I do want
8 to thank you for appearing here today to perform one of
9 the most important duties of citizenship.

10 I also want to emphasize the important
11 opportunity that you have to serve as a juror. We are
12 one of the relatively few countries in the world that
13 have citizen juries even in criminal cases. Juries are
14 made up of citizens, such as yourselves. You are the
15 cornerstone of our criminal justice system and a vital
16 aspect of our democratic society and the system of
17 justice established through our Constitution.

18 For those of you who are selected, there will
19 be some inconvenience and perhaps even hardship, but I
20 think if you've ever served yourself or have spoken to
21 anyone that has served, you'll find it to be a
22 gratifying public service experience.

23 Each of you is qualified by law to sit as a
24 juror. The question to be considered by the Court and
25 the parties is whether this case is the appropriate

1 case for your participation as a juror.

2 The selection process is intended to
3 accomplish two goals:

4 The first is to enable the Court to determine
5 whether any of you should be excused for cause, that
6 is, to determine if there's anything about your
7 knowledge of the case, the witnesses, the parties, or
8 the issues that would either affect your ability to be
9 impartial or cause an objective observer to conclude
10 that your ability to be fair and impartial might be
11 affected whether or not it is, in fact, affected.

12 Secondly, to enable counsel for the parties
13 to exercise their own individual judgment with respect
14 to what we call preemptory challenges, that is,
15 challenges for which no reason need be given.

16 At the end of this process, as I indicated,
17 twelve of you will be seated and sworn in as jurors.
18 You will deliberate following the close of all the
19 evidence.

20 In addition, four of you will be seated and
21 sworn as alternate jurors, who will hear all the
22 evidence as well and replace any of the other jurors if
23 he or she is unable, for whatever reason, to complete
24 his or her service. The alternate jurors will be
25 excused at the end of the case before the jurors begin

1 deliberation.

2 I know each of you have completed the Court's
3 questionnaires, and I thank you for that. It has
4 enormously helped in the selection process, and I'm not
5 going to repeat those questions here.

6 I will ask some limited follow-up questions.

7 If you need to answer "yes" to any of the questions,
8 please answer by raising your hand. When you are
9 called upon, please stand and identify yourself by your
10 name and juror number.

11 If there are any follow-up questions that you
12 would prefer answering more privately at the bench, let
13 me know, and I will bring you forward and ask you in
14 that setting; although, it will be with counsel.

15 But before I ask any other specific
16 questions, I do want to ask whether any of you need to
17 correct or supplement or change any of the information
18 you gave in your questionnaires either due to changed
19 circumstances, refreshed recollections, or information
20 that you have since learned about this case that would
21 materially change your answers to the questionnaires.

22 Is there anyone that needs to make any supplemental
23 disclosures?

24 Yes. Would you identify yourself, please.

25 PROSPECTIVE JUROR BELL: Betsy Bell. I'm

1 Juror No. 4.

2 THE COURT: All right.

3 PROSPECTIVE JUROR BELL: I report to a CEO.
4 I'm an executive assistant to a CEO, and he was a
5 nominee for Trump for deputy administrator. I also
6 rented office space for the Trump campaign at one
7 point.

8 THE COURT: All right. Thank you for that.

9 Anyone else?

10 (No response.)

11 THE COURT: This, I'm sure, was implicit in
12 the questionnaires, but let me just for the record ask
13 you these questions: Are any of you not 18 years old?

14 (No response.)

15 THE COURT: Are any of you not citizens of
16 the United States?

17 (No response.)

18 THE COURT: Have any of you not resided in
19 this area for more than a year?

20 (No response.)

21 THE COURT: I'm now going to ask counsel for
22 the government to introduce themselves and the members
23 of their trial team.

24 Mr. Durham.

25 MR. DURHAM: Thank you, Your Honor.

1 Ladies and gentlemen, my name is John Durham.
2 I'm special counsel with the Department of Justice. I
3 will be prosecuting this case along with my colleagues,
4 Assistant Special Counsel Michael Keilty and Assistant
5 Special Counsel Brittain Shaw. Also, at our counsel
6 table, the woman sitting in front of me is Paralegal
7 Specialist Kori Arsenault, and the gentleman at the
8 table is Supervisory Special Agent Ryan James of the
9 Federal Bureau of Investigation.

10 If you should know any of us, I would ask you
11 to bring that to the Court's attention.

12 THE COURT: Thank you.

13 Do any of you know Mr. Durham or any of his
14 colleagues?

15 (No response.)

16 THE COURT: Have any of you had any dealings
17 with the United States Attorney's Office in this
18 district?

19 PROSPECTIVE JUROR ANTOL: Your Honor?

20 THE COURT: Yes.

21 THE COURT SECURITY OFFICER: Sir, would you
22 stand up and identify yourself.

23 PROSPECTIVE JUROR ANTOL: Brian Antol, Juror
24 No. 2. I'm a retired FBI employee, and I worked on
25 some counterterrorism cases that I had some interviews

1 and stuff down here.

2 THE COURT: All right. Thank you.

3 What is your juror number again, sir?

4 PROSPECTIVE JUROR ANTOL: No. 2.

5 THE COURT: All right. Thank you.

6 Anyone else?

7 Yes.

8 PROSPECTIVE JUROR ERCEG: Marta Erceg, Juror
9 No. 28. I work for the Office of the Inspector
10 General, and on occasion we present cases to --
11 (Reporter clarification.)

12 PROSPECTIVE JUROR ERCEG: My name is
13 Martha -- oh, the last part. I work for the Office of
14 the Inspector General, and occasionally we present
15 criminal cases for prosecution to the Eastern District.

16 THE COURT: Thank you.

17 Anyone else?

18 Thank you. Yes, sir.

19 PROSPECTIVE JUROR FISCHER: Juror No. 32. I
20 also work for the Office of the Inspector General, and
21 I work in conjunction with the FBI.

22 THE COURT: All right. Thank you.

23 Anyone else?

24 (No response.)

25 THE COURT: Thank you.

1 Mr. Sears, would you identify yourself and
2 your colleagues.

3 MR. SEARS: Thank you, Your Honor.

4 Good morning. My name is Stuart Sears. This
5 is my law partner, Danny Onorato. We are with the law
6 firm of Schertler, Onorato, Mead & Sears in Washington,
7 D.C. We have the privilege of representing our client,
8 Igor Danchenko, who is a defendant in this case. With
9 us here as well are our paralegal specialists, Matt
10 Milzman, Charlie Tent, and Grace McMahon.

11 Thank you.

12 THE COURT: Do any of you know Mr. Sears,
13 Mr. Onorato, any of his colleagues, or Mr. Danchenko?

14 (No response.)

15 THE COURT: Have any of you ever had any
16 dealings with Mr. Sears' and Mr. Onorato's law firm?

17 (No response.)

18 THE COURT: Thank you.

19 In the questionnaires, you were told that the
20 government has accused Mr. Danchenko of making false
21 statements to agents of the Federal Bureau of
22 Investigation in connection with or related to the
23 government's investigation into whether individuals
24 associated with the Trump 2016 presidential campaign
25 coordinated activities with the Russian government.

1 All of you indicated there was nothing about the
2 subject matter or the nature of this case that would
3 make it difficult for you to hold the government to a
4 standard of proof beyond a reasonable doubt or to be
5 fair and impartial.

6 Let me just give you a little bit more
7 information.

8 More specifically, the government has alleged
9 that on June 15, 2017, Mr. Danchenko made a materially
10 false statement about whether he had talked to a man
11 named Charles Dolan about anything that showed up in
12 what's referred to as the Steele report, and on four
13 different occasions in 2017, he is alleged to have
14 falsely stated that he received an anonymous phone call
15 from a man he believed was named Sergei Millian.

16 With this additional information, is there
17 anyone here who thinks that they know anything about
18 this case beyond what you have previously disclosed or
19 that there's anything about the subject matter of this
20 case that you think would make it difficult for you to
21 be fair and impartial?

22 THE COURT SECURITY OFFICER: Your Honor?

23 THE COURT: Yes.

24 PROSPECTIVE JUROR BORDEN: Casey Borden,
25 Juror 8.

1 THE COURT: All right.

2 PROSPECTIVE JUROR BORDEN: I don't know
3 anything in particular, but my husband -- and I did
4 disclose this -- in 2016 was director of oversight for
5 the House of Representatives, and then he moved to the
6 oversight committee in the House of Representatives
7 where they were investigating the election. So there
8 is a chance, as things go on, that things may come back
9 to me because we discussed it. Right now, no.

10 THE COURT: All right. Thank you for that.

11 Anyone else?

12 (No response.)

13 THE COURT: All right. I'm now going to
14 identify for you persons who may be witnesses or
15 referred to in this case. Please raise your hand if
16 you know or you think you know any of these
17 individuals: FBI Supervisory Special Agent Amy
18 Anderson; FBI Supervisory Intelligence Analyst Brian
19 Auten; Charles Dolan; FBI Special Agent Kevin Helson;
20 Brittany Herzog; FBI Supervisory Special Agent Ryan
21 James; and Sergei Millian.

22 (No response.)

23 THE COURT: Thank you.

24 Mr. Danchenko is presumed to be innocent and
25 does not have to testify or offer any evidence. Does

1 anyone believe that he or she would be unable to accept
2 this fundamental principle of our criminal justice
3 system?

4 (No response.)

5 THE COURT: The government must prove
6 Mr. Danchenko's guilt beyond a reasonable doubt. Does
7 anybody believe that he or she would be unable to
8 accept this fundamental principle of our criminal
9 justice system?

10 (No response.)

11 THE COURT: The applicable law will be given
12 to you through instructions. It will be your duty to
13 follow those instructions and to follow the law as I
14 give it to you whether or not you agree with it. Is
15 there anyone here who, for whatever reason, does not
16 believe that he or she could follow the law as I give
17 it to you and put aside your own personal views as to
18 what the law should be?

19 (No response.)

20 THE COURT: Is there anyone here who believes
21 that if you are seated to sit on this case, you have
22 any concern about your ability to render a verdict
23 solely on the evidence presented at the trial and the
24 context of the law as I will give it to you in my
25 instructions disregarding any other ideas, notions, or

1 beliefs about the law that you may have encountered in
2 reaching your verdict?

3 (No response.)

4 THE COURT: All of you have been asked about
5 whether service on this jury would impose an undue
6 hardship, and all of you have indicated that you would
7 be willing to serve. Is there anyone here who believes
8 that, for whatever reason, your situation has changed
9 so that service would simply be too hard a hardship on
10 you at this time?

11 All right. Anyone else?

12 I'll hear you at the bench.

13 (Conference at the bench, as follows:)

14 THE COURT: All right.

15 MR. SEARS: Your Honor, if I could just --
16 you had already stated, so I didn't want to interrupt
17 you. I didn't hear Juror 9 called. I don't know if
18 anybody else had a record of Juror 9.

19 THE CLERK: Juror No. 9 was excused. He had
20 COVID.

21 MR. SEARS: That explains it.

22 THE COURT: All right. Good.

23 (Prospective Juror Stump approaches the
24 bench.)

25 THE COURT: Come a little bit closer.

1 Identify yourself, please.

2 PROSPECTIVE JUROR STUMP: My name is Emma
3 Stump. I'm Juror No. 81.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR STUMP: Anyway, what I
6 wanted to say is just depending on the overall length,
7 I will not be getting any compensation from my job. It
8 wouldn't reflect well on me, and I think that would
9 really cause a lot of stress and would, like, take up a
10 lot of my mind space throughout the week and affect my
11 ability to be impartial.

12 THE COURT: What do you do for a living?

13 PROSPECTIVE JUROR STUMP: I work for a
14 government contractor up in Maryland.

15 THE COURT: Well, the trial is expected to
16 last probably seven to ten days. Do you think that
17 would impose too much of a hardship on you?

18 PROSPECTIVE JUROR STUMP: Yeah. I've got
19 five days covered, but that's it.

20 THE COURT: All right. I will consider that.

21 Thank you.

22 (Prospective Juror Stump exits the bench, and
23 Prospective Juror Fischer approaches the bench.)

24 THE COURT: Yes, sir. Your number?

25 PROSPECTIVE JUROR FISCHER: Michael Fischer,

1 Juror No. 32.

2 THE COURT: Yes. Come a little closer.

3 PROSPECTIVE JUROR FISCHER: I don't mind.

4 So my wife has metastatic Stage IV cancer,
5 and I'm her caregiver. I just found out on Thursday
6 that I will not be getting paid for this, which is
7 strange because I work for a federal contractor. But I
8 will not be. So...

9 THE COURT: All right. I will consider that.

10 PROSPECTIVE JUROR FISCHER: Thank you. I
11 would just say it would be an honor either way. I will
12 find a way to make it work, if necessary.

13 THE COURT: All right. I appreciate that.

14 PROSPECTIVE JUROR FISCHER: It would be
15 awesome.

16 THE COURT: Thank you.

17 (Prospective Juror Fischer exits the bench, and

18 Prospective Juror Cruz approaches the bench.)

19 PROSPECTIVE JUROR CRUZ: Mary Cruz, Juror
20 No. 20.

21 THE COURT: Yes.

22 PROSPECTIVE JUROR CRUZ: My husband has to
23 have surgery on Monday, the 17th. So I don't have
24 family close that would be able to provide
25 transportation to and from the surgery.

1 THE COURT: All right. Is that the only
2 conflict you would have?

3 PROSPECTIVE JUROR CRUZ: That's my only
4 conflict, yes, sir.

5 THE COURT: Would that take up the whole day
6 for you?

7 PROSPECTIVE JUROR CRUZ: We don't have a time
8 yet. They will call on Friday with the time for the
9 surgery. It will be between 8:00 and 3:00. I just
10 don't know.

11 THE COURT: All right. Thank you. I'll
12 consider that.

13 PROSPECTIVE JUROR CRUZ: Okay. Thank you.
14 (Prospective Juror Cruz exits the bench, and
15 Prospective Juror Carimbocas approaches the
16 bench.)

17 THE COURT: Yes.

18 PROSPECTIVE JUROR CARIMBOCAS: Alicea
19 Carimbocas, Juror No. 12.

20 THE COURT: Yes.

21 PROSPECTIVE JUROR CARIMBOCAS: I have an
22 interview on Friday at 10:30 that I can't postpone. I
23 had an interview today. It is the final step for a
24 regional manager position.

25 THE COURT: This is on Friday at what time?

1 PROSPECTIVE JUROR CARIMBOCAS: At 10:30.

2 THE COURT: How long do you think that would
3 take?

4 PROSPECTIVE JUROR CARIMBOCAS: Thirty
5 minutes.

6 THE COURT: Okay. All right. Thank you. I
7 will consider it.

8 (Prospective Juror Carimbocas exits the bench, and
9 Prospective Juror Mooney approaches the bench.)

10 PROSPECTIVE JUROR MOONEY: Good morning. I'm
11 John Mooney, Juror No. 61.

12 THE COURT: Yes, sir.

13 PROSPECTIVE JUROR MOONEY: I still do not
14 believe I have a hardship, a disqualifying hardship,
15 but I want to make very clear what I said in my written
16 statement. My wife is having her second knee replaced
17 on November 10. If the trial is indeed two weeks,
18 there will be no problem. But I have to do a dead stop
19 on the 9th because she needs constant care.

20 THE COURT: Of November?

21 PROSPECTIVE JUROR MOONEY: Right.

22 THE COURT: No, it will not go that long.

23 PROSPECTIVE JUROR MOONEY: Okay.

24 (Prospective Juror Mooney exits the bench, and
25 Prospective Juror Hurd approaches the bench.)

1 PROSPECTIVE JUROR HURD: Hello.

2 THE COURT: Yes.

3 PROSPECTIVE JUROR HURD: My name is Holliday
4 Hurd, 44.

5 THE COURT: Yes.

6 PROSPECTIVE JUROR HURD: Sir, I'm extremely
7 interested in serving, but my husband has Stage IV
8 mesothelioma. I don't -- I take him to all his
9 appointments, and I didn't know the timing.

10 THE COURT: I understand.

11 PROSPECTIVE JUROR HURD: I would still like
12 to try because I've -- my work situation, which I have
13 retired from, has never allowed me to be a juror. So I
14 don't know what to say.

15 THE COURT: It sounds like it's a difficult
16 situation for you, though. Do you think you'd be able
17 to concentrate?

18 PROSPECTIVE JUROR HURD: Oh, I could
19 certainly concentrate. It is just the logistics. We
20 have no family left. Everyone in my family has died in
21 the last four years, and we have no family.

22 THE COURT: I'm sorry to hear about that, and
23 I will consider that. All right.

24 PROSPECTIVE JUROR HURD: I still would like
25 to try.

1 THE COURT: All right. Would you like to
2 serve?

3 PROSPECTIVE JUROR HURD: I would love to
4 serve.

5 THE COURT: All right. Thank you.

6 (Prospective Juror Hurd exits the bench, and
7 Prospective Juror Edmond approaches the bench.)

8 THE COURT: Okay.

9 PROSPECTIVE JUROR EDMOND: Adrienne Edmond,
10 Juror 26.

11 THE COURT: Yes.

12 PROSPECTIVE JUROR EDMOND: So I had a
13 preplanned trip that will interfere with -- at the end
14 of the month, I will be going to the University of
15 South Carolina with my organization. We have
16 everything planned for Thursday, the 27th, and Friday,
17 the 28th. I do have documentation that I had booked
18 the trip.

19 THE COURT: I can say with confidence we'll
20 be done by then.

21 PROSPECTIVE JUROR EDMOND: We'll be done.

22 Okay. If we'll be done, great.

23 THE COURT: All right. Thank you.

24 (Prospective Juror Edmond exits the bench, and
25 Prospective Juror Hall approaches the bench.)

1 PROSPECTIVE JUROR HALL: Good morning.

2 THE COURT: Good morning.

3 PROSPECTIVE JUROR HALL: Juror 39,
4 Christopher Hall. I apologize if this isn't the
5 appropriate time. I have a subpoena to be in Prince
6 William County court tomorrow. So I don't know if this
7 was the time to bring this to your attention or not.
8 Do you want to see it?

9 THE COURT: As a witness or --

10 PROSPECTIVE JUROR HALL: As a witness, yes.
11 I just didn't know if this was the right time to bring
12 it up or not.

13 THE COURT: That's your only conflict?

14 PROSPECTIVE JUROR HALL: Well, I have more
15 conflicts, but I can work around that. I didn't know
16 what took precedence.

17 THE COURT: What is the nature of the -- is
18 it a hearing or a trial?

19 PROSPECTIVE JUROR HALL: It's a trial.

20 THE COURT: A trial. In what court?

21 PROSPECTIVE JUROR HALL: Prince William
22 County criminal, general district.

23 THE COURT: General district. Okay. All
24 right. Thank you.

25 A PROSPECTIVE JUROR: Okay. Thank you.

1 (Prospective Juror Hall exits the bench, and
2 Prospective Juror Reed approaches the bench.)

3 PROSPECTIVE JUROR REED: Hi.

4 (Reporter clarification.)

5 A PROSPECTIVE JUROR: Juror No. 21. I don't
6 know what constitutes as a hardship. I have four
7 kiddos, and two of them are sick right now. And they
8 are all in sports. It's every night of the week.

9 THE COURT: How old are they?

10 PROSPECTIVE JUROR REED: All in elementary
11 school.

12 THE COURT: All right. We would be from 9:30
13 to, roughly, 6:00. How does that impact your life?

14 PROSPECTIVE JUROR REED: It takes over an
15 hour to get here. I mean, I just felt that I needed to
16 share that.

17 THE COURT: Do you want to be excused?

18 PROSPECTIVE JUROR REED: Um, oh, I don't
19 know. I don't know.

20 THE COURT: All right. Thank you.

21 PROSPECTIVE JUROR REED: Uh-huh.

22 THE COURT: I think that's it. Let me go
23 back to the ones who were identified earlier. I think
24 we have enough. Unless you-all want me to individually
25 talk to some of these, I'm inclined to excuse all of

1 the ones identified.

2 MR. DURHAM: That's fine.

3 THE COURT: Well, except for the one woman
4 whose husband has cancer, but she says she wants to
5 serve. I will give her that opportunity.

6 MR. DURHAM: As a husband, I'm not sure --

7 THE COURT: So I'm inclined to go ahead and
8 strike for cause all the ones that have been
9 identified. We still have an ample number of jurors to
10 choose from.

11 MR. DURHAM: That's fine for the government,
12 Your Honor.

13 THE COURT: I'm going to ask one more
14 question, if there's anything else they can think of
15 that might affect your judgment. Is there anything you
16 would like for me to specifically ask anybody?

17 MR. ONORATO: Anything that you want to bring
18 to the Court's attention, just a catchall.

19 THE COURT: Yes.

20 THE CLERK: Judge, I just need to go over the
21 ones that were stricken.

22 THE COURT: Nos. 59, 6, 67, 50, 26, 45, 49,
23 55, 56, 81, 32, 20, 12, 39, and 21.

24 MR. SEARS: Your Honor, the only other -- I
25 don't know if the Court wants to ask the jurors whether

1 they have read anything since they filled out the
2 questionnaires, between then and now, or any other news
3 reports. That was the only question --

4 THE COURT: Well, I did ask them whether
5 anything had come to their attention that would affect
6 their judgment.

7 (Proceedings continued in open court, as follows:)

8 THE COURT: Yes. One final question: Is
9 there anything that I haven't asked about that anyone
10 thinks would affect their ability to be a fair and
11 impartial juror in this case?

12 (No response.)

13 THE COURT: Does anyone have reason to think
14 that, for whatever reason, even if it doesn't pertain
15 to what you've been asked about previously, would
16 affect your ability to serve as a fair and impartial
17 juror?

18 (No response.)

19 THE COURT: All right. Thank you.

20 We'll now proceed with jury selection.

21 THE CLERK: Yes, Judge.

22 Ladies and gentlemen of the jury, as I call
23 your name, please come forward and have a seat in the
24 jury box as directed by the marshal: Juror No. 83,
25 Malcolm Thompson; Juror Number 88, Scott Valentin;

1 Juror No. 25, Amy Dickinson; Juror No. 5, Shailja
2 Bhatia; Juror No. 1, Kyle Addie; Juror No. 53, John
3 Kiefer; Juror No. 61, John Mooney; Juror No. 35, Mohsen
4 Fouda; Juror No. 51, Condence Keefe; Juror No. 22,
5 Jennifer Dalrymple; Juror No. 60, John Michel; and
6 Juror No. 14, Donald Connors, Jr.

7 (Strikes taken.)

8 THE CLERK: The following jurors are excused
9 with the thanks of the Court and may return to their
10 seats in the courtroom: Juror No. 88, Scott Valentin;
11 Juror No. 53, John Kiefer; Juror No. 61, John Mooney;
12 Juror No. 22, Jennifer Dalrymple; Juror No. 14, Donald
13 Connors, Jr.; Juror No. 25, Amy Dickinson; Juror
14 No. 35, Mohsen Fouda; and Juror No. 1, Kyle Addie.

15 Ladies and gentlemen of the jury, as I call
16 your name, please come forward and have a seat in the
17 jury box as directed by the marshal: Juror No. 82,
18 Gloria Thomas; Juror No. 78, Anquannet Skyler; Juror
19 No. 3, Terence Beck; Juror No. 33, Chandler Fitch;
20 Juror No. 84, Marie Toriello-Johnson; Juror No. 44,
21 Holliday Hurd; Juror No. 11, Catiria Bushnell; and
22 Juror No. 46, Melody Johnson.

23 (Strikes taken.)

24 THE CLERK: The following jurors are excused
25 with the thanks of the Court and may return to their

1 seat in the courtroom: Juror No. 46, Melody Johnson;
2 Juror No. 84, Marie Toriello-Johnson; Juror No. 44,
3 Holliday Hurd; Juror No. 33, Chandler Fitch.

4 Ladies and gentlemen of the jury, as I call
5 your name, please come forward and have a seat in the
6 jury box as directed by the marshal: Juror No. 77,
7 Hadi Shakeri; Juror No. 7, Raymond Bishop, Jr.; Juror
8 No. 8, Kasey Borden; and Juror No. 18, Sharita
9 Crawford.

10 (Strikes taken.)

11 THE CLERK: The following jurors are excused
12 with the thanks of the Court and may return to their
13 seats in the courtroom: Juror No. 18, Sharita
14 Crawford; Juror No. 8, Kasey Borden.

15 Ladies and gentlemen of the jury, as I call
16 your name, please come forward and have a seat in the
17 jury box as directed by the marshal: Juror No. 37,
18 Joel Greene; Juror No. 87, Jake Valdez.

19 (Strikes taken.)

20 THE CLERK: Ladies and gentlemen of the jury,
21 as I call your name, please come forward and have a
22 seat in the jury box as directed by the marshal: Juror
23 No. 17, Clare Cranshaw; Juror No. 90, Alexis Wankowski;
24 Juror No. 40, Christophe Hammel; and Juror No. 62,
25 Anthony Moore.

1 (Strikes taken.)

2 THE CLERK: The following juror is excused
3 with the thanks of the Court and may return to their
4 seat in the courtroom: Juror No. 17, Clare Cranshaw.

5 Ladies and gentlemen of the jury, as I call
6 your name, please come forward and have a seat in the
7 jury box as directed by the marshal.

8 THE COURT: Hold on one minute. Let me see
9 counsel at the bench, please.

10 (Conference at the bench, as follows:)

11 THE COURT: I'm sure I wasn't clear. What I
12 envisioned happening was that we would have four people
13 brought in. Each side would strike one of those. Then
14 we would bring in another four, and each one would have
15 a strike so we'd end up with four.

16 Did somebody not strike?

17 MR. SEARS: We did not strike. We
18 misunderstood.

19 THE COURT: Why don't you go ahead and
20 strike. Then we'll bring another four, and each of you
21 get a strike.

22 MR. SEARS: Got it. Okay.

23 THE COURT: All right.

24 (Proceedings continued in open court, as follows:)

25 (Strikes taken.)

1 THE CLERK: The following juror is excused
2 with the thanks of the Court and may return to their
3 seat in the courtroom: Juror No. 40, Christophe
4 Hammel.

5 Ladies and gentlemen of the jury, as I call
6 your name, please come forward and have a seat in the
7 jury box as directed by the marshal: Juror No. 36,
8 Kelsey Gallagher; Juror No. 13, Epifanio Clarin, III;
9 Juror No. 75, Susan Sanderson; and Juror No. 31, David
10 Felton.

11 (Strikes taken.)

12 THE CLERK: The following jurors are excused
13 with the thanks of the Court and may return to their
14 seats in the courtroom: Juror No. 13, Epifanio Clarin,
15 III, and Juror No. 75, Susan Sanderson.

16 Will the defendant please stand and face the
17 jury.

18 Ladies and gentlemen of the jury, please
19 stand and raise your right hands and respond "I shall"
20 after the oath is administered.

21 (The oath is administered.)

22 THE CLERK: Thank you. Please be seated.

23 THE COURT: Please be seated.

24 Ladies and gentlemen, we've now concluded
25 jury selection. For those of you who have not been

1 selected, you're excused with the thanks of the Court.

2 (People exit.)

3 THE COURT: Let me see counsel at the bench.

4 (Conference at the bench, as follows:)

5 THE COURT: All right. Any objections to the
6 composition of the jury as selected?

7 MR. DURHAM: None, Your Honor.

8 MR. ONORATO: No, Your Honor.

9 THE COURT: I would normally break for lunch
10 at 1:00. My thought is to have an early break for
11 lunch and then come back at 1:00, and we'll do
12 preliminary instructions and then opening statements.

13 All right.

14 MR. DURHAM: Yes, Your Honor.

15 THE COURT: Before we leave, I'll give you my
16 guidance on opening statements.

17 MR. DURHAM: Yes, Your Honor.

18 MR. ONORATO: Your Honor, I just would like
19 to inquire if the end of the day is at 6:00 today?

20 THE COURT: Well, between 5:30 and 6:00
21 depending on how the evidence goes.

22 I will just go ahead and put on the record
23 now: I don't want you to mention in opening statement
24 either the counterintelligence evidence or the failure
25 to produce evidence. I'm not going to make a

1 definitive ruling right now. I'm going to do it in the
2 context of witnesses when you present the testimony. I
3 don't want that mentioned in opening statement.

4 I don't want it mentioned in opening
5 statement either about those public articles that you
6 have mentioned or any of these other emails that you've
7 mentioned.

8 MR. ONORATO: Can I ask another question?

9 THE COURT: Yes.

10 MR. ONORATO: So I do have evidence -- from I
11 think it's Agent Auten -- that he was aware of the
12 public emails because he went through this material
13 when he was interviewed by the Office of Inspector
14 General, and he told them that he saw articles
15 generally. So I won't talk about the specific ones but
16 that he was aware --

17 THE COURT: You expect that to come out
18 through his testimony?

19 MR. ONORATO: Absolutely. I'm going to read
20 it to him.

21 THE COURT: All right.

22 MR. KEILTY: Your Honor, the next question --
23 so in opening, is it permissible to say the FBI didn't
24 receive any of these emails as opposed to talking about
25 he should have produced these emails?

1 THE COURT: I think you can say the FBI
2 obtained these emails.

3 MR. KEILTY: They never obtained these
4 emails.

5 THE COURT: Obviously, at some point, right?
6 How did they get them? Through a warrant?

7 MR. DURHAM: After a search warrant. We did
8 the search warrant.

9 THE COURT: Again, I'm not sure precisely how
10 this is going to play out until I hear the testimony.
11 I would say you obtained these emails. They say what
12 they say. All right.

13 MR. ONORATO: Your Honor, I just want to let
14 the Court be aware of one other thing. I'm a Type 2
15 diabetic. I'm not making a call. I am just monitoring
16 my sugar.

17 THE COURT: All right. We won't have you
18 arrested.

19 MR. DURHAM: All right. Good.

20 Thank you, Your Honor.

21 (Proceedings continued in open court, as follows:)

22 THE COURT: Ladies and gentlemen, I'm going
23 to excuse you for what will be an early lunch. But
24 before we do that, I want to give you some information
25 about how we are going to proceed in this case. Our

1 normal trial day after today will begin at 9:30 in the
2 morning. You should make arrangements to be here at
3 the courthouse by 9:15. We'll adjourn at the end of
4 the day typically between 5:30 and 6:00 depending on
5 where we are in the evidence. In the morning, we'll
6 have a break probably around 11:00. We'll break for
7 lunch at 1:00, come back at 2:00. We'll have a break
8 in the afternoon around 3:30.

9 If at any time anybody needs a break other
10 than these sort of standard breaks, just raise your
11 hand, and I will accommodate your request as best I
12 can.

13 When you come back from lunch, we are going
14 to begin with some preliminary instructions by me.
15 Then we'll have opening statement, and the government
16 will proceed with its case, following which the defense
17 will have an opportunity to present its case. Then the
18 government will have an opportunity to put on any
19 rebuttal evidence. We'll have closing arguments, and
20 you'll begin your deliberations.

21 I will tell you now what I will tell you
22 every time that I excuse you to the jury room and, that
23 is, do not talk about this case. You know very little
24 about it, but don't speculate about what the case is or
25 is not. You should not discuss the merits of the case

1 or any of the testimony until the close of the case
2 when you have heard all the evidence and the closing
3 arguments and all of you are together in the jury room
4 to begin your deliberations.

5 You will find in the jury room a phone.
6 That's purely for the purpose of allowing you to let
7 your family and employers know that you are going to be
8 occupied for a while. It is not to conduct any
9 business or any social activities.

10 So with that, you are excused to the jury
11 room and for lunch, and we will reconvene at 1:00.

12 (The jury exits at 12:03 p.m.)

13 THE COURT: All right. Anything else before
14 we recess?

15 MR. DURHAM: The government has nothing.

16 Thank you, Your Honor.

17 THE COURT: All right. The Court will stand
18 in recess until 1:00.

19 -----
20 Time: 12:03 p.m.

21 I certify that the foregoing is a true and
22 accurate transcription of my stenographic notes.
23

24 /s/
25 _____
Rhonda F. Montgomery, CCR, RPR